(1) Supreme Court, U.S.
FILED

991320 FEB 0 2 2000

OFFICE OF THE CLERK

No. _____

In the
SUPREME COURT OF THE UNITED STATES

JOSEPH BALDWIN CAMPBELL
Petitioner,

vs.

T.J. SLETTEN AND BEN NIBBE
Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Lawrence Herman Crosby
Counsel of Record for Petitioner
CROSBY & ASSOCIATES
630 Roseville Professional Center
2233 Hamline Avenue North
St. Paul
Minnesota 55113
(651) 635-0818

45pp

QUESTIONS PRESENTED FOR REVIEW

I. Whether a deputy sheriff or a City police officer has the requisite authority to deprive an enrolled Indian of his federally-protected land assignment without the participation of the United States in the form of a federal action of by means of a federal writ; and, whether the taking of an Indian's federally-protected land assignment by local peace officers acting under color of State law stands as a violation of federal civil rights legislation?

II. Whether the "reasonable belief of reasonable suspicion" standard proposed by the District Court in Campbell has any legal basis and whether this meets the requisite objective standard of probable cause?

III. Whether the United States District Court improperly adjudicated disputed issues of material fact in granting officer Sletten and Deputy Nibbe the benefit of qualified immunity?

CORPORATE DISCLOSURE STATEMENT

There are, as between the parties identified in the case Caption, no non-governmental corporate parties to this litigation.

TABLE OF CONTENTS

Questions Presented for Review i

Corporate Disclosure Statement ii

Table of Contents iii

Table of Authorities v

Petition for Writ of Certiorari 1

Opinions Below 1

Statement of Jurisdiction 1

Constitutional and Statutory Provisions Invoked 2

Statement of the Case 2

Reasons Why Writ Should Issue 7

I. A deputy sheriff or a City police officer does not have the requisite authority to deprive an enrolled Indian of his federally-protected land assignment without the participation of the United States in the form of a federal action of by means of a federal writ; and, the taking of an Indian's federally-protected land assignment by local peace officers acting under color of State law stands as a violation of federal civil rights legislation. 7

II. The "reasonable belief of reasonable suspicion" standard proposed by the District Court in Campbell

has no legal basis and does not meet the requisite objective standard of probable cause. 9

III. The United States District Court improperly adjudicated disputed issues of material fact in granting officer Sletten and Deputy Nibbe the benefit of qualified immunity. 12

Conclusion 17

Index to Appendix 18

TABLE OF AUTHORITIES

CONSTITUTIONS

Constitution of the United States

Article 1, Section 8 2
Fourth Amendment 2, 7, 9, 16
Fifth Amendment 2
and, Fourteenth Amendment 2, 16

Constitution and Bylaws of the Prairie Island Indian Community in Minnesota 4, 8

Minnesota State Constitution 8

CASES CITED:

Anderson v. Creighton, 483 U.S. 635 (1987) 12, 13

Arnott v. Mataya, 995 F.2d 121 (8th Cir. 1993) 16

Chase v. McMasters, 573 F.2d 1011 (8th Cir. 1978) 9

Daniels v. Williams, 474 U.S. 327 (1986) 14

Dennison v. Vietch, 560 F.Supp. 435 (D. Minn. 1983) ... *14*

DePugh v. Penning, 888 F.Supp. 959 (N.D. Iowa 1995) ... *9*

Florida v. Royer, 460 U.S. 491 (1983) 10

Gainor v. Rogers, 973 F.2d 1379 (8th Cir. 1992) *16*

Greenwood v. Peacock, 384 U.S. 808 (1966). 9

Harlow v. Fitzgerald, 457 U.S. 800 (1982) 12

Myers v. Morris, 810 F.2d 1437 (8th Cir. 1987) *12*

Pellowski v. Burke, 686 F.2d 631 (8th Cir. 1982) *14*

Ripson v. Alles, 21 F3d. 805 (8th Cir. 1993). 13, 14

Smith v. Eley, 675 F.Supp. 1301 (D. Utah 1987). 14-15

State v. Rose, 543 N.W.2d 426 (Minn. Ct. App. 1996) 8

Terry v. Ohio, 392 U.S. 1 (1968) 10, 11

Thiede v. Town of Scandia Valley, 14 N.W.2d 400 (Minn. 1944) 8

United States v. Bloomfield, 40 F.3d 910 (8th Cir. 1994) . . 10

United States v. Dickson, 58 F.3d 1258 (8th Cir. 1995) . . . 11

United States v. Dixon, 51 F.3d 1376 (8th Cir. 1995) 10

United States v. Hill, 91 F.3d 1064 (8th Cir. 1996) 10

United States v. Padilla, 113 S.Ct. 1936 (1993) 9

United States v. Place, 462 U.S. 696 (1983) *11*

United States v. Sharpe, 470 U.S. 675 (1985) 11

Walden v. Carmack, 156 F.3d 861 (8th Cir. 1998). 12

STATUTES and RULES CITED:

Minnesota Statutes, § 566.05 and .06 15

Minnesota Statutes, § 609.605 15

Minnesota Statutes, § 621.57 15

Rule 4, FRAP 6

28 U.S.C. § 2107 6

28 U.S.C. § 1254 1

28 U.S.C. § 1343 6

42 U.S.C. § 1983 ..... 2, 6, 7, 9, 14, 16

SECONDARY AUTHORITIES

Allen K. Chen, *The Burdens of Qualified Immunity: Summary Judgment and the Role of Facts in Constitutional Tort Law*, 47 Am. U. L. Rev. 1 (1997) 15

PETITION FOR WRIT OF CERTIORARI

Appellant Joseph Campbell ask that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Eighth Circuit, *Joseph Baldwin Campbell, Appellant v. T.J. Sletten and Ben Nibbe, Appellees,* Civil File 98-3952 (8th Cir. 1998), submitted June 15, 1999, and filed of record Nov. 4, 1999.

OPINIONS BELOW

This Petition seeks review of the unreported decision of the United States Court of Appeals for the Eighth Circuit, *Joseph Baldwin Campbell, Appellant v. T.J. Sletten and Ben Nibbe, Appellees*, 98-3952 (8th Cir. 1998), submitted June 15, 1999, and filed of record Nov. 4, 1999, reprinted on page 1a of the Appendix. Judgment was entered Nov. 4, 1999. This appellate decision affirmed the unpublished decision of Judge David Doty of the United States District Court for the District of Minnesota, *Joseph Baldwin Campbell v. T.J. Sletten and Ben Nibbe,* Civil File No. 97-1242, filed Oct. 15, 1998, reprinted beginning at page 5a of the appendix, which granted summary judgment in favor of the defendants.

STATEMENT OF JURISDICTION

This petition seeks to review the decision of the United States Court of Appeals for the Eighth Circuit, filed November 4, 1999. Therefore, this United States Supreme Court's jurisdiction is properly based on 28 U.S.C. § 1254. This petition is filed within 90 days of the Court of Appeals' entry of its final decision.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 8, The Congress shall have Power...[to] make all Laws which shall be necessary and proper....

Amendment IV, The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated.

Amendment V, No person shall be...deprived of... property without due process of law....

Amendment XIV, ...[No State] shall deprive any person of life, liberty, or property without due process of law.

Title 42, § 1983, states that "[e]very person who, under color or any statute, ordinance, regulation, custom, or usage, of any State..., subjects, or causes to be subjected, any citizen of the United States...to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

Every one of these Constitutional and Statutory Provisions were raised by Joseph Campbell as early as the Complaint in this matter.

STATEMENT OF THE CASE

Joseph Baldwin Campbell, an enrolled member of the Prairie Island Indian Community in Minnesota, held a land assignment from his tribe and from the United States

Department of the Interior. Such a land assignment cannot be conveyed or transferred without the express participation and approval of the United States.

Campbell's tribe had wanted to take Campbell's land assignment to build a tribal administration building. Campbell had agreed to exchange his land assignment for another land assignment, but the tribe breached the agreement by not giving Campbell the other land and by ignoring the due process procedures established in the tribal constitution. On account of the tribe's breach Campbell stayed on his land assignment.

In late September, 1993, the tribe telefaxed a Trespass Notice to Campbell informing him that

> [t]his is notice to you that the Prairie Island Indian Community hereby revokes and withdraws any permission or license which you may have to enter the expired land assignment on the Reservation..., [...and that] you no longer have any permission or right to enter any such property. Any entry made by you hereafter onto such property shall constitute trespass by you and shall be reported as such to appropriate law enforcement officials....

The Trespass Notice had not been authorized by action of the Prairie Island Tribal Council, but had been the unilateral act of the Chairman, Freeman Johnson.

On the morning of September 28, 1993, Police Officer Sletten blocked the driveway so that Campbell could not leave his land assignment while Sletten awaited the delivery of

the Trespass Notice from Deputy Sheriff Nibbe. Neither Nibbe nor Sletten had in his possession a Writ of Restitution, any Court order, or the necessary pleadings for an unlawful detainer action pursuant to Minnesota law.

Campbell first explained to the officers that his land assignment had not been revoked or rescinded. Campbell also offered the officers a telefaxed letter he had just received from Leif Rasmussen, his-then attorney, a letter addressed to the Tribal Council and its General Council:

> On Friday, September 24, 1993, the undersigned and Joe Campbell were served a Trespass Notice prohibiting Mr. Campbell from entering his land assignment. The Notice says it is authorized by the Tribal Council but it is not dated and only contains one Council member['s] signature. As the Council is aware, the Constitution [of the Prairie Island Indian Community] requires three Council members['] signatures to authorize Tribal action. Accordingly, the current Notice is not valid. More importantly, it is my understanding that the Bureau of Indian Affairs must approve the revocation of any land assignment. According to representatives of the BIA and the Field Solicitor[']s Office, the revocation of Mr. Campbell's land assignment has not been approved, therefore, the Council has not validly revoked Mr. Campbell's land assignment. Any action to unlawfully remove Mr. Campbell by force could have grave

consequences for the Community and result in undesirable publicity.

Mr. Campbell is still willing to abide by the May 12, 1993, agreement and give up his land assignment voluntarily if an understanding can be worked out regarding the Prairie Island Environmental Specialist position. It is Mr. Campbell's desire that this situation be resolved amicably.

Deputy Nibbe and Campbell exchanged the Trespass Notice and Attorney Rasmussen's letter respectively. The officers refused to hand the telecopy of Attorney Rasmussen's letter to the attorneys for the tribe.

Campbell turned to go off and transmit the Trespass Notice to Attorney Rasmussen.
As Campbell turned away, the officers restrained Campbell, one officer on either arm. The officers had not advised Campbell that he was under arrest. Campbell jerked his arms forward when Nibbe and Sletten grabbed him; each officer went down on one knee. At this point, Campbell asked why the officers were holding him and one answered that he was just trying to arrest Campbell. While the officers were restraining Campbell, Campbell sicced his dog on the officers an effort to distract the police. Campbell knew that this dog would only bark.

When the officers explained to Campbell that he was under arrest, Campbell allowed himself to be handcuffed. Neither officer ever offered Campbell his Miranda rights.

Campbell was booked, fingerprinted, and locked up at the Goodhue County Jail. Although the Court released Campbell that same day, Campbell understood that he could not return to the reservation.

The following day, contractors hired by the tribe demolished Joe Campbell's house, pole barn, and outbuildings. Campbell had no place to which he might return.

Campbell's personal property had not been secured by Deputy Nibbe or Officer Sletten following Campbell's arrest, and much of this was damaged, stolen, or destroyed.

The trespassing and resisting arrest charges were dropped by the County Prosecutor.

Campbell brought suit against the Tribe; that matter ended in a decision in favor of Campbell after binding arbitration. Campbell then brought suit against Nibbe and Sletten.

The District Court had jurisdiction to hear this case pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1343. The District Court entered summary judgment on all issues in favor the defendants. The United States Court of Appeals then had jurisdiction to hear the appeal below pursuant to 28 U.S.C. § 2107 and Rule 4, Federal Rules of Appellate Procedure since the appeal was filed within 30 days of the District Court decision.

REASONS WHY THE WRIT SHOULD ISSUE

I: A County deputy sheriff or a City police officer does not have the requisite authority to deprive an enrolled Indian of his federally-protected land assignment without the participation of the United States in the form of federal action or by means of a federal writ; and, the taking of an Indian's federally-protected land assignment by local peace officers acting under color of State law stands as a violation of federal civil rights legislation.

The District Court stated that "the Fourth Amendment is the only constitutional right allegedly infringed by [peace officers Sletten and Nibbe's] actions, 11a. This conclusion disregards the fact that Campbell raised the issue of his being denied his right not to be disturbed on his land assignment without substantive due process: The deprivation of Joseph Campbell's peaceful enjoyment of his land assignment stands in itself as a violation of his civil rights.

The officers, acting unlawfully, and the tribal chairman, acting illegally, created the conditions within which Campbell could be arrested for trespass. But it is clear that the enforcement of the law must be consistent with all concomitant constitutional rights protected by the law. Campbell's constitutionally-guaranteed land assignment carries with it the corollary right to be protected in the use and enjoyment of that land assignment.

The officers-defendants in this case cannot enforce trespass laws without ascertaining the validity of the claim of

the holder of the land assignment, here, Campbell. *State v. Rose*, 543 N.W.2d 426 (Minn. Ct. App. 1996), teaches that the political subdivisions of the State of Minnesota have the right to enforce trespass law on an Indian reservation under the enabling legislation of Public Law 280, 18 U.S.C., § 1162.

However, here, no person stood at risk. No danger existed. No immediate threat of public disorder compelled the deputy or the officer to act, and the officers were on notice from an attorney that they were depriving a person of his land assignment without due process.

Article IX of the Prairie Island Community indicates that the tribal council or community council only has the authority to propose that a family be given a land assignment; the Secretary of the Interior must then approve this assignment.

Following Campbell's arrest and eviction, the Minnesota office of the Bureau of Indian Affairs communicated with the tribe and with Campbell indicating that "it would appear that Mr. Campbell could not have been in trespass since there was never formal cancellation of his original land assignment" following the proper procedures, Letter from Carol Bacon, Acting Area Director for the Bureau of Indian Affairs, to Freeman Johnson, tribal chairman, dated October 21, 1993.

The basic rights of the citizens of the United States and of the people of Minnesota include an "inviolable" right to acquire, possess, and enjoy property, even though these rights are not specifically described in the Minnesota State Constitution, *Thiede v. Town of Scandia Valley*, 14 N.W.2d 400 (Minn. 1944).

42 U.S.C. §1983 of the federal civil rights legislation creates a cause of action "not only for violations of rights conferred by federal equal civil rights laws, but for violations of other federal constitutional and statutory rights as well," *Chase v. McMasters*, 573 F.2d 1011, 1017 (8th Cir. 1978), citing *Greenwood v. Peacock*, 384 U.S. 808, 829-30 (1966). The *Chase* court indicated that violation of a law which protects an Indian person or that person's rights can be enforced as a civil rights claim on account of the unique relationship between the federal government and Indians. The defendants in this present case illegally interfered with Joe Campbell's rights to his real property and the beneficial use of his land.

These defendants denied Joe Campbell that most fundamental right to be secure in one's own home. See *DePugh v. Penning*, 888 F.Supp. 959, 975 (N.D. Iowa 1995), citing *United States v. Padilla*, 113 S.Ct. 1936 (1993). Deprivation of a protected property interest or a reasonable expectation of privacy is enough to confer standing under a Fourth Amendment as well as a civil rights claim.

The facts of this case indicate that the tribal chairman did not have the right to serve a Trespass Notice on Joseph Campbell and that the defendant-officers forced Campbell into an unnecessary confrontation. This Supreme Court must demonstrate again to police officers and to tribal officials that those who lead and those who protect must act within the law and that where such persons act outside the law, they are liable for violating another's civil rights.

II: The "reasonable belief of reasonable suspicion" standard proposed by the District Court in *Campbell* has no legal

basis and does not meet the requisite objective standard of probable cause.

The District Court in this *Campbell* case proposed a *Terry*-stop analysis, citing *Terry v. Ohio*, 392 U.S. 1 (1968), stepping over the fact that the local police first restrained Campbell from leaving his land assignment: Campbell had left his house in the morning but he could not exit his driveway because Officer Sletten had blocked the driveway. Campbell asked Officer Sletten to move his squad car; Sletten stated that Campbell could not leave. Joseph Campbell had been arrested in fact before Deputy Nibbe had even arrived.

An investigative stop must be temporary and must last no longer than is necessary to effectuate the purpose of the stop, *United States v. Dixon*, 51 F.3d 1376, 1380 (8th Cir. 1995), citing *Florida v. Royer*, 460 U.S. 491, 500 (1983): "The investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time," id. A de facto arrest occurs when the officers' conduct is more intrusive than necessary for an investigative stop, *United States v. Bloomfield*, 40 F.3d 910, 916 (8th Cir. 1994). Factors considered by the Court when determining whether a stop has become a de facto arrest include: The duration of the stop and "the degree of humiliation and fear the police conduct engenders," id. at 917, and whether the suspect was transported or isolated, *United States v. Hill*, 91 F.3d 1064, 1070 (8th Cir. 1996).

Officer Sletten kept Joe Campbell from going to work at the University of Minnesota. Sletten did not investigate the facts; instead, he blocked Campbell's driveway.

"In deciding whether a detention lasts too long to be justified in an investigative stop, and therefore becomes an arrest, we consider whether the police 'diligently pursued' a means of investigation likely to resolve their suspicions quickly," *United States v. Dickson*, 58 F.3d 1258, 1263 (8th Cir. 1995). The Court's inquiry is "not merely whether other alternatives were available, but whether the police unreasonably failed to recognize or pursue such other alternatives." id.

In *United States v. Sharpe*, 470 U.S. 675 (1985), the Court found a twenty minute detention was reasonable when the police acted diligently and the defendant contributed to the delay. In *United States v. Place,* 462 U.S. 696 (1983), the Court found a ninety-minute detention of the defendant's luggage was unreasonable when agents did not act diligently to minimize the delay. In the present case, Officer Sletten detained and so arrested Joe Campbell from the minute that he blocked Campbell's driveway with his squad car, indicating that Campbell could not leave.

The United States District Court applied its "reasonable belief of reasonable suspicion" standard to the facts of this case to justify Officer Sletten's detention of Mr. Campbell prior to Campbell's arrest. It is not entirely clear but it appears that the District Court sought to extend qualified immunity protection beyond arrests lacking probable cause, offering qualified immunity protection to unjustified *Terry* stops. Even so, the District Court does this without citation to case law outlining the analytical basis for this standard and without citation to cases with facts describing an appropriate use of this standard.

The District Court first references *Anderson v. Creighton*, *op. cit.*, at 641. One searches without success for the standard ostensibly cited. The proper standard is that objective standard demanded by United States Supreme Court jurisprudence. "Reasonable belief" may not have a subjective component or a subjective application. "Under that 'objective legal reasonableness standard,' courts are not permitted to investigate the subjective motivation of the law enforcement officer. [*Harlow v. Fitzgerald*, 457 U.S. 800 (1982)]," as cited by the Eighth Circuit in *Walden v. Carmack*, 156 F.3d 861, 869 (8th Cir. 1998).

Secondly, the District Court cites *Myers v. Morris*, 810 F.2d 1437, 1455 (8th Cir. 1987), for this standard, A-21. The *Myers* citation actually refers to "'arguable' probable cause," a standard where "*officers of reasonable competence could disagree on [the interpretation of the totality of facts based on reasonably trustworthy information justifying an arrest],*"(italics in the original text), at 1455. Under such circumstances, qualified immunity is appropriate. No text exists to support the District Court's proposed standard in *Campbell*, i.e., that the officers had a "reasonable belief that they had a reasonable suspicion."

III: The United States District Court improperly adjudicated disputed issues of material fact in granting Officer Sletten and Deputy Nibbe the benefit of qualified immunity.

Qualified immunity cannot protect Officer Sletten and Deputy Nibbe's objective conduct because their conduct did not rise to the level of a "reasonable officer." The question

of their conduct presents a disputed issue of material fact, a jury question.

As this Supreme Court has stated, "The relevant question in this case...is the objective (albeit fact-specific) question whether a reasonable officer could have believed [an officer's] warrantless search to be lawful, in light of clearly established law and the information the searching officers possessed. [Officer] Anderson's subjective beliefs about the search are irrelevant." *Anderson v. Creighton*, 483 U.S. 635, 641 (1987).

In *Ripson v. Alles*, 21 F.3d 805 (8th Cir. 1994), the Court held that the actual knowledge possessed by an arresting officer precluded the officer from obtaining the benefit of qualified immunity. The officer had listened only to the reports of a mother and her boyfriend in the context of a child custody quarrel. What the officer had ignored was the father's statement that a medical examination had determined no physical evidence of sexual abuse and, of course, the father's protestations of innocence, id. at 806-07.

The objective standard used as a norm in this cited case is instructive: "Probable cause existed in the present case if, at the moment [the officer] arrested [the father], the facts and circumstances within the [officer's] knowledge and of which he had reasonable trustworthy information were sufficient to warrant a prudent person in believing [that the father] had sexually abused his daughter," id. at 808.

The officer in *Ripson* insisted that "he arrested [the father] based on [his former wife's] allegations and her live-in boyfriend's corroboration of these allegations and that an

objectively reasonable officer would consider this information sufficient to establish probable cause," id.

The Court held that certain facts warranted caution on the part of the officer: There had been no medical evidence of sexual abuse; the parents of the child were involved in a custody dispute; and the County Attorney had asked the officer to "keep investigating," id.

The same sort of caution should have directed Officer Sletten and Deputy Nibbe. See *Pellowski v. Burke*, 686 F.2d 631, 631-32 (8th Cir. 1982), where tenants brought action against police officers for violation of their civil rights under 42 U.S.C. § 1983.

In *Dennison v. Vietch*, 560 F. Supp. 435 (D. Minn. 1983), the appellate court ruled that the officers had negligently violated the father's civil rights despite their assertion of good faith immunity under 42 U.S.C. § 1983, id. at 441-442. The court ruled that the defendants had no defense of immunity because they knew or should have known that their actions violated clearly established rights in that the officer knew the legal prerequisites before an officer might enter a person's home.

No defendant in the present case has the right to defend on the basis of simple negligence or ignorance. In *Smith v. Eley*, 675 F.Supp.1301 (D. Utah 1987), the defendant police officers claimed that these officers' actions could, at worst , be characterized as being merely negligent, and, therefore, were barred by *Daniels v. Williams*, 474 U.S. 327 (1986). The court rejected this claim, stating that *Daniels* should not be read so broadly. "[It does] not bar actions where state actors fail to exercise due care in

ascertaining the lawfulness of their conduct and then intentionally deprive another of a constitutional right based upon the negligently formulated belief that such action was justified," id. at 1305. In *Campbell*, the officers' negligent investigation into the facts surrounding their decision cannot be countenanced as objectively reasonable.

Because there is a factual dispute concerning a foundational element of Joe Campbell's claim, the issue of qualified immunity cannot be satisfactorily resolved by summary judgment on these facts. See also, *The Burdens of Qualified Immunity: Summary Judgment and the Role of Facts in Constitutional Tort Law*, 47 Am. U. L. Rev. 1 (1997).

Other issues should have been established here by the United States District Court as a matter of law: The trespass notice itself does not comply with the applicable forcible entry and unlawful detainer statutes, Minnesota Statutes, §§ 566.05 and .06, which require that a summons and complaint be served on the person who has unlawfully detained lands or tenements and require an opportunity for a judicial hearing before one can be evicted from that person's residence or real property. Also, the Trespass Notice itself cited law which had been repealed by the Minnesota Legislature, namely, Minnesota Statutes, Section 621.57; the trespass provision cited in the Notice, Minnesota Statutes, Section 609.605, subsection 5, declares that a person is guilty of misdemeanor trespass "if the person intentionally...enters the premises of another with intent to take or injure any fruit, fruit trees, or vegetables growing on the premises, without the permission of the owner or occupant." On its face, the officers could not have relied on the law stated in the Trespass Notice.

The officers' unlawful or illegal acts, committed intentionally against Joseph Campbell and with deliberate indifference and callous disregard of his rights, deprived him of his right to be free from unreasonable searches and seizures as guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States and protected by statute, 42 U.S.C., § 1983.

In the present case, Joe Campbell explained, accurately and truthfully, to the police that he had the right to remain on his land assignment. The tribe and Campbell were involved in a dispute over real property.

The District Court in the present case ignores the remonstrations of Joe Campbell, a person knowledgeable in federal real property law. More telling, the Court minimizes the telefaxed letter received by Campbell from his attorney, Leif Rasmussen, as "a single document of uncertain provenance, produced at the eleventh hour...," 16a. Every statement contained in Attorney Rasmussen's astute letter is accurate.

In *Arnott v. Mataya*, 995 F.3d 121, 124 (8th Cir. 1993), the Court declined to allow certain police officers qualified immunity, stating that where facts regarding probable cause for an arrest are disputed or where they are subject to different inferences, then the question of probable cause is for the jury and summary judgment in a case for false arrest is inappropriate: "Where there is a genuine issue of material fact surrounding the question of plaintiff's conduct, we cannot determine as a matter of law, what predicate facts exist to decide whether or not the officer's conduct clearly violated established law," id., citing *Gainor v. Rogers*, 973 F.2d 1379, 1384-85 (8th Cir. 1992).

CONCLUSION

For all these reason, the decision of the United States Court of Appeals for the Eighth Circuit should be reversed and the matter be returned with instructions for trial before the United States District Court for the District of Minnesota.

This Supreme Court of the United States should also issue an opinion holding that a violation of one's civil rights occurs when a person acting under color of State law deprives a Native American of that person's federally-protected land assignment without substantive due process.

Dated at St. Paul, Minnesota, this 2nd day of February, 2000.

Lawrence Herman Crosby
Attorney of Record for Petitioner
CROSBY & ASSOCIATES
Attorney Registration No. 192788
630 Roseville Professional Center
2233 Hamline Avenue North
St. Paul
Minnesota 55113
(651) 635-08

INDEX TO THE APPENDIX

Campbell v. Sletten and Nibbe, Appellate Case No. 98-3952, Eighth Circuit decision, filed November 4, 1999 ..... 1a

Campbell v. Sletten and Nibbe, United States District Court decision filed October 14, 1998 ..... 5a

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 98-3952

Joseph Baldwin Campbell,
Appellant,

v.

T.J. Sletten and Ben Nibbe,
Appellees.

Appeal from the
United States District Court
for the District of Minnesota

[UNPUBLISHED]

Submitted: June 15, 1999
Filed: November 4, 1999

Before HANSON, MAGILL, Circuit Judges, and JONES[1],
District Judge.

---

[1]The Honorable John B. Jones, United States District Judge, United States District Court for the District of South Dakota, sitting by designation.

PER CURIAM.

Joseph Campbell brought this action pursuant to 42 U.S.C. § 1983 alleging Red Wing Police Lieutenant T.J. Sletten and Goodhue County Deputy Sheriff Ben Nibbe arrested him in violation of the Fourth and Fourteenth Amendments. The district court[2] granted summary judgment in favor of Sletten and Nibbe on the basis of qualified immunity. We affirm.

Campbell, an enrolled member of the Prairie Island Indian Community ("Prairie Island") in Minnesota, held a land assignment from Prairie Island. Prairie Island sought to obtain Campbell's land assignment to build an administrative building. In May 1993, Campbell entered into an agreement with Prairie Island to convey his land assignment to Prairie Island in exchange for employment and a replacement land assignment. Campbell believed Prairie Island breached the agreement and he refused to move from his land assignment.

Sletten and Nibbe went to the property to serve Campbell with a trespass notice from Prairie Island. When the officers served Campbell with the trespass notice, he turned around to reenter his home on the land. The officers each grabbed one of Campbell's arms. Campbell jerked away, causing the officers to fall to the ground. Campbell also ordered his dog to defend him, which the did by barking and approaching the officers, but not biting the officers. The officers arrested Campbell for trespass and obstructing legal process under Minnesota law.

---

[2]The Honorable David S. Doty, United States District Judge for the District of Minnesota.

To withstand a motion for summary judgment on the grounds of qualified immunity,

> a civil rights plaintiff must (1) assert a violation of a constitutional right; (2) demonstrate that the alleged right is clearly established; and (3) raise a genuine issue of fact as to whether the official would have known that his alleged conduct would have violated [the] plaintiff's clearly established right.

Habiger v. City of Fargo, 80 F.3d 289, 295 (8th Cir.), cert. denied, 519 U.S. 1011 (1996). A person has "a clearly established right under the Fourth Amendment not to be arrested unless there [is] probable cause for [the] arrest." Id. In the context of deciding whether the law enforcement officers are entitled to qualified immunity, the issue "is not probable cause in fact but arguable probable cause." Myers v. Morris, 810 F.2d 1437, 1455 (8th Cir.), cert. denied, 484 U.S. 828 (1987). The question for immunity purposes thus becomes "whether the officer should have known that the arrest violated plaintiff's clearly established right." Habiger, 80 F.3d at 295. The qualified immunity defense protects "all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341 (1986). If an officer had probable cause to arrest an individual for committing a certain crime it is immaterial that the officer thought, even mistakenly, that he had probable cause to arrest the individual for a second crime. Foster v. Metropolitan Airports Comm'n, 914 F.2d 1076, 1080 (8th Cir. 1990).

We conclude Sletten and Nibbe had arguable probable cause to arrest Campbell for criminal trespass.[3] Sletten and Nibbe separately investigated the situation and relied upon a facially valid trespass notice. After Sletten and Nibbe served Campbell with the trespass notice and requested that he vacate the premises, Campbell refused to leave the property. Moreover, Sletten and Nibbe had probable cause to arrest Campbell for obstruction of legal process under Minnesota law[4] when he pulled away from the officers causing them to fall to the ground and ordered his dog to defend him after the officers instructed Campbell to vacate the premises. We agree with the district court's conclusion that Sletten and Nibbe are entitled to qualified immunity in this action.

The district court's judgment is affirmed.

A true copy.

ATTEST:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

---

[3]Minnesota law provides that it is illegal to intentionally "trespass[] on the premises of another and, without claim of right, refuses to depart from the premises on demand of the lawful possessor." Minn.Stat. § 609.605(b). Minnesota's criminal law is enforceable on the Prairie Island Indian Community. See 18 U.S.C. § 1162(a); State v. LaRose, 543 N.W.2d 426 (Minn. Ct. App. 1996).

[4]Minnesota law provides that a person obstructs legal process and is subject to criminal penalties when he "obstructs, resists, or interferes with a peace officer while the officer is engaged in the performance of official duties." Minn. Stat. § 609.50.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 97-1242 (DSD/JMM)

Joseph Baldwin Campbell,
Plaintiff,

v. ORDER

T.J. Sletten and Ben Nibbe,
Defendants.

Lawrence H. Crosby, Esq. And Crosby & Associates, 630 Roseville Professional Center, 2233 Hamline Avenue North, St. Paul, MN 55113, counsel for plaintiff.

Pierre N. Regnier, Esq., Joseph E. Flynn, Esq. Katherine E. Kenney, Esq. and Jardine, Logan & O'Brien, 2100 Piper Jaffray Plaza, 444 Cedar Street, St. Paul, MN 55101-2179, counsel for defendant Sletten.

Jon K. Iverson, Esq. and Erstad & Riemer, 1000 Northland Plaza, 3800 West 80th Street, Minneapolis, MN 55431-4409, counsel for defendant Nibbe.

This matter is before the court on parties' cross-motions for summary judgment. Based on a review of the file, record, and proceedings herein, and for the reasons stated, the court grants defendants' motions and denies plaintiff's motions.

BACKGROUND

Joseph Campbell claims that Red Wing Police Lieutenant T.J. Sletten and Goodhue County Deputy Sheriff Ben Nibbe violated his federal civil rights when they arrested him for trespassing and obstructing legal process. On the morning of September 28, 1993, Sletten drove to 5636 Sturgeon Road, property located on the Prairie Island Indian Reservation and within the boundaries of Goodhue County. Sletten had been dispatched in response to a call from the Prairie Island Indian Community ("Community") complaining that Campbell, who lived at the Sturgeon Road address, was illegally occupying the property and, therefore, was in violation of Minnesota's criminal trespass law. When Sletten arrived, he found several people waiting for him on the property, including Pete Poncelet, an attorney for the Community. Poncelet explained to Sletten that Campbell, a temporary land assignee, had previously agreed to move from the Community-owned property but now refused to leave. Trespass notices were visible at several places around the property.

Soon after Sletten's arrival, Campbell emerged from his trailer house and drove his car to the end of the driveway, where Sletten has parked. When Campbell drove near, Sletten informed Campbell that remaining on the property would constitute an illegal trespass. In spite of this warning, Mr. Campbell returned to his house, stated that he wanted to consult with his attorney and the Bureau of Indian Affairs. After a few minutes inside, Campbell walked out of the house to speak with Poncelet. As they spoke, a phone rang from within the house, and Campbell went back inside.

Sometime around the time of his arrival at the Sturgeon Road property, Sletten contacted Deputy Nibbe, who, Sletten

had been informed, possessed the formal trespass notice. Nibbe had received the trespass notice the previous day, September 27, from the deputy clerk at the Goodhue County Sheriff's Department. Because he had not seen this kind of document before, Nibbe contacted someone from the Community and inquired as to its origin. Satisfied of its validity, Nibbe twice on September 27 attempted to serve this trespass notice at the Sturgeon Road property. On both occasions, however, Campbell was not at home. On the morning of September 28, therefore, in response to Sletten's call, Nibbe returned to the Sturgeon Road property with the trespass notice. He arrived after Campbell had returned to his house for the second time.

When Campbell emerged once again from his trailer, Nibbe met Campbell and informed him that he had a document stating that Campbell's continuing presence on the property would violate the criminal trespass laws. Nibbe handed the trespass notice to Campbell and told him that he should leave the property. Campbell then presented a faxed letter to Poncelet or Nibbe.

All parties agree, however, about what happened next. Nibbe repeated his statement that Campbell was trespassing and that he should leave the property. Ignoring Nibbe, Campbell turned and began to walk back to his trailer. Before Campbell stepped away from them, Nibbe and Sletten each grabbed one of Campbell's arms. In response, Campbell, "jerked [his] arms and they... fell down to the ground." Nibbe and Sletten informed Campbell that he was under arrest. Sometime shortly before or after being informed that he was under arrest, Campbell ordered one of his dogs to attack the officers. Campbell describes this dog as a cross between a Labrador and a German Sheperd, an aggressive animal that would get "so close to you think you're getting bit." Although the dog made

contact with the officers, it did not bite them. Campbell then submitted to handcuffing without further struggle. After being cited for violations of obstructing legal process and trespass, Campbell was transported to the Goodhue County Jail. Campbell was booked, and then made his first appearance. Shortly thereafter Campbell was released from custody. No condition was placed on his release. Although Campbell claims that a bailiff warned him not to return to his property, Campbell concedes that he never talked with Sletten or Nibbe, or any other police officer, about whether he cold or could not return to his property. The charges against Campbell were ultimately dropped due to the Community's noncooperation.

The day after his arrest and subsequent release from custody, on Sept. 29, 1993, a demolition crew employed by the Community demolished the buildings that Campbell had erected on the Sturgeon Road property. No evidence has been adduced suggesting that Sletten or Nibbe were involved with or aware of the demolition.

Having received a favorable ruling in an arbitration proceeding involving the Community, Campbell now brings this action under 42 U.S.C. § 1983 claiming that Sletten and Nibbe violated his federal rights.[1]

DISCUSSION

A. Standard for Summary Judgment

---

[1]Although the Campbell's Second Amended Complaint is less than clear on the point, Campbell's counsel assured the court during oral argument that no state claims exist.

Each party in this case has moved for summary judgment. The court should grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). This standard mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a), which requires that the trial court to direct a verdict if there can be but one reasonable conclusion as to the verdict. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). There is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. Id. at 249.

On a motion for summary judgment, the court views the evidence in favor of the nonmoving party and gives that party the benefit of all justifiable inferences that can be drawn in her favor. Id. at 250. The nonmoving party, however, cannot rest upon mere denials or allegations in the pleadings. Nor may the nonmoving party simply argue facts supporting its claim will be developed later or at trial. Rather the nonmoving party must set forth specific facts, by affidavit or otherwise, sufficient to raise a genuine issue of fact for trial. See Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). If reasonable minds could differ as to the import of the evidence, a verdict should not be directed. See Anderson, 477 U.S. at 250-51. If a plaintiff fails to support an essential element of a claim, however, summary judgment must issue because a complete failure of proof regarding an essential element renders all other facts immaterial. See Celotex, 477 U.S. at 322-23.

B. Qualified Immunity

1. Standard

Sletten and Nibbe contend that the doctrine of qualified immunity protects them from liability in the present case. Under federal law, police officers have immunity against civil actions unless their conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The issue of qualified immunity is separate from the merits. "The issue on the merits is whether the officer violated the law when the arrest was made, whereas the immunity question is whether the officer violated clearly established law when the arrest was made." Gainor v. Rogers, 973 F.2d 1379, 1383 (8th Cir. 1992) (emphasis in original).

Whether a police officer is immune from trial is a question of law. See Hunter v. Bryant, 502 U.S. 224, 228 (1991). First, the court must determine whether the plaintiff has asserted a constitutional right. See Siegert v. Gilley, 500 U.S. 226 (1991). Second, the court must determine whether the constitutional right in question is "clearly established." Id. To show that the law is "clearly established," a plaintiff must make a particularized showing that the contours of a right are "sufficiently clear" that a "reasonable [officer] would understand that what he is doing violates plaintiff's rights." Anderson v. Creighton, 483 U.S. 635, 640 (1987).

Finally, if the plaintiff can show that the defendant's conduct violated clearly established law, the defendant "'must demonstrate that no material issues of fact remain as to whether the defendant's actions were objectively reasonable in light of the law and the information the defendant possessed at the time of his actions.'" Cross v. City of Des Moines, 965 F.2d 629, 632 (8th Cir. 1992) (quoting Salmon v. Schwarz, 948 F.2d 1131,

1136 (10th Cir. 1991)). The defendant is entitled to judgment as a matter of law if there is no genuine issue as to any material fact pertaining to the objective reasonableness of the defendant's action. Id. To succeed on a motion for summary judgment, defendants need not show that there is only one reasonable conclusion a jury could reach. The standard to be applied by the court is whether the defendants "'acted reasonably under settled law in the circumstances, not whether another reasonable, or more reasonable, interpretation of the events can be constructed." Cross, 965 F.2d at 632 (quoting Hunter, 502 U.S. at 228).

2. Alleged Constitutional Violations

The court's first task, therefore, is to determine whether Campbell has adequately alleged constitutional violations, The precise counters of Campbell's § 1983 claims are difficult to trace. To determine what rights are legitimately implicated in the present case, the court will categorize its analysis according to the two factual events at the heart of Campbell's complaint.

a. Campbell's Arrest for Trespass and Obstruction of Judicial Process

Campbell's complaint primarily focuses on his arrest for trespass and obstructing legal process, which he alleges violated his Fourth and Fourteenth Amendments. The Supreme Court has made clear that claims involving an officer's conduct pursuant to an arrest are properly analyzed under the Fourth Amendment's "reasonableness" standard rather than under a substantive due process standard. See Graham v. Connor, 490 U.S. 386, 395 (1989). Accordingly, the court concludes that the Fourth Amendment is the only constitutional right allegedly infringed by the officers' actions.

in order to meet Fourth Amendment standards. See, e.g., Myers v. Morris, 810 F.2d 1437, 1455 (8th Cir. 1987). The critical question thus becomes whether the officers' conclusion that they had probable cause was reasonable under the circumstances.

For an officer to successfully invoke qualified immunity in the context of a warrantless arrest, he need possess only "'arguable' probable cause." Myers, 810 F.2d at 1455. This means that officers are protected even in cases where they "reasonably but mistakenly conclude that probable cause is present." Anderson v. Creighton, 893 U.S. 635, 641 (1987). In effect, this formula grafts an extra layer of deference onto the already flexible probable cause standard, which requires that a court assess an officer's action "in terms of the circumstances confronting a reasonably cautious police officer at the time of the arrest." Myers, 819 F.2d at 1455. Qualified immunity thus "'gives ample room for mistaken judgments' by protecting 'all but the plainly incompetent or those who knowingly violate the law.'" Malley v. Briggs, 475 U.S. 335, 341 (1986).

a. Probable Cause and Arguable Probable Cause to Arrest for Trespass

In Minnesota, it is illegal for a person to intentionally "trespass [] on the premises of another and, without claim of right, refuse [] to depart from the premises on the demand of the lawful possessor." Minn. Stat. § 609.605. Public Law 280, 18 U.S.C. § 1151 (1994), makes the criminal trespass statute enforceable in Indian country. See State v. LaRose, 543 N.W.2d 426 (Minn. Ct. App. 1996).

Under the undisputed facts established by the depositions and affidavits in this case, a reasonable officer could have believed that he had probable cause to arrest Campbell for

criminal trespass. In making the arrest, Sletten and Nibbe depended on several credible sources of information. First, the officers relied on the verbal representations of the Community. See Clay v. Conlee, 815 F.2d 1164, 1168 (8th Cir. 1987) ("Clearly, law enforcement officers are entitled to rely on information supplied by the victim of a crime, absent some indication that the information is not reasonably trustworthy or reliable."). In addition, the officers relied on the facially valid trespass notice that had been signed by the Community, on which Nibbe, a sheriff's deputy, had an arguable statutory duty to execute. See Minn. Stat. § 387.03 (providing that sheriffs must "execute all processes, writs, precepts, and orders issued or made by lawful authority and to the sheriff delivered"); Hoppe v. Klapperich, 28 N.W.2d 780, 789 (Minn. 1947) ("It was the sheriff's imperative duty to execute [a facially valid] warrant, and he was not obligated to go behind the warrant to determine the validity of the prior proceedings."). In similar federal cases, arrests by officers based on facially valid legal documents have been held to be reasonable, even absent further investigation by the officers. See, e.g., Whiting v. Kirk, 960 F.2d 248, 251-52 (1st Cir. 1992) (officers' reliance on an "obscure yet facially valid writ" satisfies objective reasonableness of qualified immunity); Masters v. Crouch, 872 F.2d 1248, 1252-53 (6th Cir. 1989) (same regarding arrest warrant).

When making an arrest pursuant to a trespass complaint, an officer cannot be expected to "carry surveying equipment and a Decennial Digest." Bodzin v. City of Dallas, 768 F.2d 722, 725 (5th Cir. 1985). Rather, it is enough that the officer "receives information from a third party whom the officer has reason to believe is telling the truth" about the nature and extent of the property involved. Kelly v. Myler, 149 F.3d 641, 647 (7th Cir. 1998). Even so, the two officers in the present case had

separately spent time prior to making the arrest inquiring into the matter. Nibbe had spoken with someone at the Community the day before the arrest, and Sletten had spent substantial time at the scene, before making an arrest, asking questions of the key parties and carefully assessing the situation. Further, each officers' knowledge that a separate law enforcement department had investigated the trespass claim could only have bolstered his belief in its validity. While police officers may not bootstrap each other into a probable cause finding, a reasonable police officer could properly take into account the independent assessment of another law enforcement agency.

Further, if the officers had been versed in the case law, they would have found ample support for their approach to Campbell in Perkins v. County of St. Louis, 397 N.W.2d 405 (Minn. Ct. App. 1987). In Perkins, the plaintiffs sued a sheriff and his deputy for false arrest, claiming that the officers lacked probable cause to arrest them for trespass. The officers had entered a cabin and arrested the plaintiffs relying on the representations of a third party who claimed a right to possess the cabin. The Perkins court held that the documentary support backing the third party's claims was enough to support the officers' finding of probable cause. The factual context leading to the holding in Perkins closely parallels that of the present case, with one exception: in the present case, Campbell produced some documentation - - a fax from his attorney - - contradicting the trespass complainants. However, a single document of uncertain provenance, produced at the eleventh hour, would not have negated the ample credible information otherwise supporting Sletten and Nibbe's finding of probable cause. See Eubanks v.Lawson, 122 F.3d 639, 641 n.3 (8th Cir. 1997) ("A reasonable officer is not required to believe everything he is told"); United States v. Hughs, 940 F.2d 1125, 1127 (8th Cir. 1991) (same). At the very least, Nibbe and

Sletten possessed enough information to support a reasonable belief that they had probable cause to arrest Campbell. Qualified immunity should therefore attach.

b. Reasonable Suspicion and Arguable Reasonable Suspicion to Restrain

By carefully examining the sequence of events on the morning of Campbell's arrest, the court also reaches the conclusion that Nibbe and Sletten should receive immunity.

As an initial matter, the court observes that the officers did not arrest Campbell until after he pulled away from the grasp of the officers with enough force to drag them to the ground. Under Minnesota law, a person obstructs legal process when he "obstructs a peace officer while the officer is engaged in the performance of official duties." Minn. Stat. § 609.50. A claim by the defendant that he was merely responding to unlawful police action is no defense. See Berg v. City of St. Louis Park, 433 N.W.2d 87 (Minn. 1988). At the moment Campbell physically pulled the officers to the ground, therefore, they clearly had probable cause to arrest him for obstructing legal process. And once an officers has probable grounds to arrest on one offense, it is irrelevant whether he had probable cause to arrest on another. See Foster v. Metropolitan Airports Comm'n, 914 F.2d 1076, 1080 (8th Cir. 1990) ("'The arrest and detention of plaintiff was a single incident. In our view, when a peace officer has probable cause to believe that a person is committing a particular public offense, he is justified in arresting that person, and it is immaterial that the officer may have thought, without probable cause, that the defendant was committing or had committed other offenses as well.'" (quoting Linn v. Garcia, 531 F.2d 855, 862 (8th Cir. 1976)).

Accordingly, the court concludes that Campbell's formal arrest was valid.

This leaves only one narrow question about the validity of the officers' actions on the morning of Campbell's arrest: Was the officers' initial attempt to grasp Campbell also permissible? Although Sletten and Nibbe undoubtedly acted to restrict Campbell's movement, their conduct can be categorized as a full-blown arrest only if "a reasonable person in the suspect's position would have understood the situation to constitute a restraint on freedom of movement of the degree which the law associates with formal arrest." United States v. Corral-Franco, 848 F.2d 536. 540 (5th Cir. 1988). In Terry v. Ohio, 392 U.S. 1 (1968), the Supreme Court distinguished temporary police stops in response to suspicious behavior from arrests based on probable cause: "It does not follow that because an officers may lawfully arrest a person only when he is apprised of facts sufficient to warrant a belief that the person has committed or is committing a crime, the officer is equally unjustified, absent that kind of evidence, in making any intrusion short of an arrest." Id. at 26. Indeed, in cases following Terry, the Supreme Court has endorsed exactly the kind of temporary seizure enacted by Sletten and Nibbe in the present case. In Adams v. Williams, for example, the Court states that "[a] brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officers at the time." 407 U.S. 143, 146 (1972). See also Hayes v. Florida, 470 U.S. 811, 816 (1985) ("If there are articulable facts supporting a reasonable suspicion that a person has committed a criminal offense, that person may be stopped in order to identify him, to question him briefly, or to detain him briefly while attempting to obtain additional information." (citing United States v. Hensley, 470 U.S. 229, 232 (1985)).

Thus instructed by Terry and its progeny, this court concludes that the limited attempt by Sletten and Nibbe to keep Campbell from returning to his trailer was a non-arrest seizure.[3]

In differentiating full arrests from less intrusive stops, Terry held that non-arrest intrusions on personal liberty, though subject to the Fourth Amendment, could nonetheless be justified by a quantum of information less than that needed to support probable cause. Specifically, the Court approved temporary detentions when the officer "observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot." Terry, 392 U.S. at 36. Applying this formula to the present case, Sletten and Nibbe could reasonably have suspected that Campbell was trespassing based on the credible representations of the Community. And given these reasonable suspicions, the officers would have been justified in maintaining the status quo by preventing Campbell from returning to the house. Additionally, in the context of Campbell's recalcitrant and erratic conduct, the officers would have been justified - - as a separate safety matter - - in sheparding Campbell away from his house and his aggressive dog.

---

[3]Although determining whether an arrest has occurred involves an objective test, the court notes that Campbell himself concurs with the court's interpretation of the officers' stop. States Campbell, "I was grabbed before either of them arrested me or told my I was under arrest." Second Affidavit of Joseph Baldwin Campbell 4 (July 17, 1998). Campbell then quotes with approval Sletten's deposition testimony: "Officer Sletten said in his deposition that he grabbed me by the arm 'to give [me] the chance to not go back [to his house] so [I] wouldn't be arrested." Id.

In making a determination about qualified immunity, the court need not conclude that the officers possessed reasonable suspicion. It need only find that the officers had a reasonable belief that they had a reasonable suspicion that Campbell was trespassing before they attempted to detain him. Cf. Anderson, 893 U.S. at 641. This standard - - what might be called "arguable reasonable suspicion," cf. Myers, 810 F.2d at 1455 - - protects Sletten and Nibbe unless their actions were completely beyond the pale of reasonable police work. Because their decision to restrain Campbell fell safely on the correct side of this standard, the officers are entitled to qualified immunity.

CONCLUSION

Based on the foregoing, **IT IS HEREBY ORDERED** that the defendants' motions for summary judgment (Doc. Nos. 28 & 36) are granted and plaintiff's motion for summary judgment (Doc. No. 40) is denied.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: October 14, 1998.

/SS: David S. Doty
United States District Court